

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT ALVARADO, in his
capacity as Trustee of the
CARPENTERS HEALTH AND
WELFARE TRUST FUND FOR
CALIFORNIA, et al.,

Plaintiffs,

v.

MARGARET ELLEN ALVAREZ,
Individually; MARGARET ELLEN ALVAREZ,
Individually and dba R.J. HATLER
CONSTRUCTION, INC.; R.J. HATLER
CONSTRUCTION, INC.,
a California Corporation

Defendants.

No. C-05-00569 PJH (WDB)

**ORDER FOR SUPPLEMENTAL
BRIEFING RE MOTION FOR
DEFAULT JUDGMENT**

Plaintiffs' Motion for Default Judgment, filed May 16, 2005, will be heard **on
Wednesday, August 10, 2005 at 1:30 p.m.**

By Wednesday, July 27, 2005, plaintiffs must file with the Court and serve on
defendants a supplemental submission addressing the following issues.

1. Does the Federal Arbitration Act (FAA) apply? If so, have plaintiffs
satisfied the standard for confirming an arbitration award pursuant to the FAA?

2. Plaintiffs ask the Court to enter a default judgment against Ms. Alvarez,
individually, and against R. J. Hatler Construction, Inc., confirming the Arbitration

1 Award by the Board of Adjustment in the amount \$347,914.91. As the Court
2 understands it, the damages subsumed by the Award include the following: (i)
3 \$120,672.06 representing delinquent contributions for the period May 2003 through
4 August 2003 and encompassed by the promissory note, (ii) \$13,378.02 representing
5 liquidated damages on the delinquent contributions for the period May 2003 through
6 August 2003 and encompassed by the promissory note, (iii) \$3,957.70 representing
7 interest accrued at the rate of 6% on delinquent contributions for the period May 2003
8 through August 2003 and encompassed by the promissory note, (iv) \$190,551.94
9 representing delinquent contributions for the period September 2003 through January
10 2004, (v) \$19,055.19 representing liquidated damages on the delinquent contributions
11 for the period September 2003 through January 2004, and (vi) \$300.00 representing
12 the cost of arbitration. In the alternative, plaintiffs ask the Court to enter judgment
13 on plaintiffs' claims for breach of contract (breach of the promissory note as to the
14 period May 2003 through August 2003 and breach of the Collective Bargaining
15 Agreement as to the period September 2003 through January 2004). Plaintiffs must
16 state whether the Court's understanding of plaintiffs' request is accurate.

17 The Court notes that the promissory note is not among the documents
18 introduced before the Board of Adjustment at the arbitration proceedings. Plaintiffs
19 must explain how the Board's Award came to encompass the amounts reflected in the
20 promissory note.

21 3. Plaintiffs indicate that the basis for holding Ms. Alvarez individually
22 liable for delinquent contributions is the promissory note. However, it appears that
23 the promissory note obligates Ms. Alvarez to pay delinquent contributions, liquidated
24 damages and interest only for the period May 2003 through August 2003
25 (\$138,007.78). Is the Court's understanding correct? What is the legal basis for
26 plaintiffs' apparent request that the Court enter judgment against Ms. Alvarez
27 individually for the entire \$347,914.91? Is it plaintiffs' position that the Board's
28

1 Award holds Ms. Alvarez individually liable for the entire \$347,914.91? If so, what
2 is the basis for plaintiffs' position?

3 4. As noted in paragraph 2 above, it does not appear to the Court that
4 plaintiffs are seeking interest on the delinquent contributions from the period
5 September 2003 through January 2004. Plaintiffs must confirm whether the Court's
6 understanding is correct. If plaintiffs do seek interest on the delinquent contributions
7 for this period, what is the basis for plaintiffs' position that they are entitled to
8 interest thereon? What is the applicable rate of interest, and what is the basis for
9 plaintiffs' request for that rate? Do plaintiffs contend that interest accrues on both the
10 delinquent contributions and liquidated damages? If so, what is the basis for
11 plaintiffs' contention that they are entitled to interest on liquidated damages?

12 5. Plaintiffs request an order directing defendants to pay all sums revealed
13 by an audit as due and owing. If the Court requires defendants to submit to an audit
14 how will plaintiffs proceed following the audit? More specifically, what notice will
15 defendants receive of future proceedings and of the amounts plaintiffs claim are
16 owed, and what opportunity will defendants have to challenge the accuracy of the
17 audit?

18 Plaintiffs seek interest on contributions due and owing, if any, as revealed by
19 the audit. Motion at 3:6-7. What is the source of authority for plaintiffs' position that
20 they are entitled to interest? What is the applicable rate of interest and what is the
21 basis for plaintiffs' request for that rate?

22 6. Plaintiffs seek attorneys' fees and costs for this litigation. In plaintiffs'
23 Memorandum of Points and Authorities in Support of Petition to Confirm Arbitration
24 Award, filed February 28, 2005, plaintiffs seek reimbursement of their attorneys' fees
25 on the ground that defendants acted with "bad faith." Memorandum at 4-6.
26 However, the record indicates that plaintiffs may be entitled to attorneys' fees
27 pursuant to contract(s), the Board's Award, and/or pursuant to ERISA. What is (are)
28 the source(s) of authority for plaintiffs' request for reimbursement of attorneys' fees?

1 In addition, plaintiffs must respond to the following. (i) Plaintiffs must
2 identify which attorneys worked on this case and must present evidence of those
3 attorneys' experience and credentials so that the Court can assess plaintiffs' request
4 for compensation at a rate of \$200.00 per hour. (ii) Plaintiffs must also present
5 evidence of Senior Paralegal Catherine Roussel's experience and credentials so that
6 the Court can assess plaintiffs' request for compensation at a rate of \$95.00. (iii)
7 Plaintiffs must provide legal authority for their position that fees incurred for a
8 "Litigation Case Clerk" are compensable as a component of attorneys' fees. In the
9 event that the Court finds that "Litigation Case Clerk" fees are reimbursable,
10 plaintiffs must submit evidence of Eleanor Natwick's experience and credentials to
11 justify the asserted billing rate of \$75.00. Plaintiffs also must identify which tasks
12 (and the number of hours taken to complete the task) were performed by a paralegal
13 and which were performed by a Litigation Case Clerk. (iv) Plaintiffs seek fees of
14 "approximately \$700.00" for "unbilled" work. Declaration of Concepcion E. Lozano-
15 Batista, filed May 16, 2005, at 3:17-18. Plaintiffs must submit a declaration
16 identifying each task encompassed by the request for reimbursement of "unbilled"
17 work, the amount of time attributed to that task, and who performed that task.

18 7. Plaintiffs seek reimbursement for cost of courier service for filing
19 Plaintiffs' Motion for Default Judgement and related papers. What evidence supports
20 plaintiffs' request for costs of courier service for filing the Motion for Default
21 Judgment?

22 8. Plaintiffs' Motion for Default Judgment seeks an "accounting." Motion
23 at 3:9-10. Plaintiffs' Petition to Confirm Arbitration Award, etc., filed February 8,
24 2005, does not appear to seek an accounting. Do plaintiffs seek an "accounting?" If
25 so, how does an accounting differ from plaintiffs' requested audit? What does this
26 request add to plaintiffs' request for confirmation of the arbitration award? If this
27 request is not redundant or superfluous, what specific relief do plaintiffs seek? What
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1 legal authority supports plaintiffs' contention that they are entitled to an
2 "accounting?"

3 9. The Carpenters Master Agreement attached to the Petition and to the
4 Declaration of Richard Alcantar indicates an effective date of June 3, 2003. See,
5 Petition, at Ex. A and Errata to Declaration of Richard Alcantar in Support of Motion
6 for Default Judgment, filed May 13, 2005, at Ex. A. It is our understanding that
7 plaintiffs seek delinquent contributions pertaining to work completed in May 2003.
8 Plaintiffs must submit a supplemental declaration stating whether the Master
9 Agreement in effect in May 2003 was identical to the Master Agreement attached to
10 the Petition and if not, specifying all relevant differences.

11 10. In their Petition to Confirm Arbitration Award, etc., filed February 8,
12 2005, plaintiffs state, "but Trust Fund contribution delinquencies are excluded from
13 the arbitration provisions of the Agreement." Petition at 6:22-23. What does this
14 statement mean? What is the basis for this statement? What is the effect of this
15 statement on plaintiffs' request for an order confirming the arbitration award?

16 11. The Summons, filed April 5, 2005, indicates that plaintiffs served Ms.
17 Alvarez with the Petition and supporting papers at an address on Spruce Avenue in
18 Clovis, California. The record indicates that plaintiffs have served Ms. Alvarez with
19 subsequent documents, including plaintiffs' Motion for Default Judgment, at an
20 address on Palm in Fresno, California. Plaintiffs must set forth their understanding
21 of Ms. Alvarez's current location and must explain why service to the Fresno address
22 is adequate to notify Ms. Alvarez of these proceedings.

23
24 **IF DEFENDANTS MARGARET ELLEN ALVAREZ AND/OR R.J.**
25 **HATLER CONSTRUCTION, INC., INTEND TO RESPOND** to plaintiffs'
26 supplemental submission or anything in plaintiffs' Motion for Default Judgment then
27 **by Friday, August 5, 2005 at noon**, DEFENDANTS **MUST** FILE with the Court,
28 DELIVER to the undersigned's chambers, and SERVE on plaintiffs a statement

1 notifying the Court that defendants intend to appear in person at the hearing **on**
2 **Wednesday, August 10, 2005 at 1:30 p.m.** at which time the Court and the parties
3 will discuss the appropriate manner in which to proceed.

4 **The Court ORDERS plaintiffs' to serve defendants with a copy of this**
5 **order on or before Friday, July 22, 2005.**

6 IT IS SO ORDERED.

7 Dated: July 13, 2005

8
9 /s/ Wayne D. Brazil
10 WAYNE D. BRAZIL
United States Magistrate Judge

11 cc: plaintiffs by email,
12 defendants by U.S. Mail
13 and by plaintiffs,
14 PJH, wdb, stats
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